IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3.3.2006

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

T.C.(A)Nos.273 to 275 of 2006
and
T.C.M.P.Nos.1293 to 1294 of 2006

Commissioner of Income-Tax-VI,
Chennai. ... Appellant in all the appeals

Vs.

P.V.Bhoopathy ... Respondent in all the appeals

The above T.C. Appeals are preferred under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 12.8.2004 made in ITA Nos.818, 819 and 820/Mds/2000. for the Assessment years 1990-91, 1991-92 & 1992-93 respectively ITA NO. 2,3,4/99-2000/PR respectively dated 31.01.2000 on the file of the Commissioner of Income Tax (Appeals) XI Chennai 34 against PAN/GIR NO. 719-B dated 30.03.1999 on the file of the Deputy Commissioner of Income Tax Circle I (1) Pondicherry- 1)

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal in ITA Nos.818, 819 and 820/Mds/2000 dated 12.08.2004.

2. The Revenue is the appellant. The assessment years involved in the present appeals are 1990-91, 1991-92 and 1992-93, respectively.

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3. The brief facts of the case are as follows:-

(i) The assessee is an individual and he filed income tax returns for the assessment years in question, within the time allowed under section 139(1) of the Income Tax Act. The assessee filed revised returns for the assessment years 1989-1990 to 1997-1998 on 6.10.1997. In the revised returns, the assessee disclosed agricultural income for the first time. The revised returns for the assessment years 1990-91 and 1991-92 were regularised by issue of notice under Section 148 on 27.3.1998. The assessing officer did not accept the agricultural income declared in the revised returns as genuine and treated the same as an income from other sources. The assessing officer, after scrutinising the details furnished by the assessee, worked out the differences between the investments and the source accepted by the assessee and treated the same as income of the assessee under section 68 and 69 of the Income Tax Act. The assessing Officer did not accept the sources of income explained by the assessee on account of (a) Loan from S.Sengammal, Mother-in-law of the assessee, (b) Receipt of money from Saranathan Chettiar, and (c) Credit for opening balance of Rs.5,85,663/- as on 1.4.1989.

(ii) Aggrieved by the orders of the assessing Officer, the assessee filed appeals before the Commissioner of Income Tax (Appeals), which authority agreed with the findings of the assessing Officer and confirmed the additions made by the assessing Officer on account of excess of investments over sources.

(iii) Not satisfied with the order of the Commissioner of Income Tax (Appeals), the assessee approached the Income Tax Appellate Tribunal, Chennai Bench. The Tribunal, after considering the entire case, allowed the appeal filed by the assessee and deleted the additions made by the assessing Officer.

(iv) It is against the said order of the Tribunal, the revenue has preferred the present appeals raising the following substantial question of law,

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition made by the Assessing Officer to the extent sustained by the Commissioner of Income Tax (Appeals) by way of excess of investment over sources therefor,

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misdirecting itself in law without considering the weight of evidence, circumstances, sequence of events and legal principles relating to burden of proof ?"

4. Admittedly, this Court considered the assessee's own case for the assessment years 1993-94 to 1996-97 in T.C.Nos.1178 to 1181 of 2005, wherein the same question of law was raised and passed the order dated 10.11.2005 to the following effect:

"6. The above narrated findings of the Income Tax Appellate Tribunal are purely findings of facts. The Tribunal, after analysing the entire case, taking into consideration the explanations offered by the assessee and after satisfying itself came to such findings. That being so, we are not inclined to interfere with such findings of fact.

7. At this juncture, we feel it relevant to refer to the decision of Madhya Pradesh High Court in the case of C.I.T. Vs. Pradeep Shantaram Padgaonkar (143 ITR 785). That is a case where the assessee made a total investment of Rs.70,198/- during the accounting periods relating to the assessment years 1969-70 and 1970-71. The contention of the assessee was that the investment was made out of the gifts and donations received by him from his mother's sister. The Income Tax Officer did not accept the assessee's explanation and held that such investment represented the assessee's income from undisclosed sources. The Income Tax Officer also initiated penalty proceedings against the assessee and levied penalty. The Tribunal held that the assessee came forward voluntarily offering the income for tax and it was a case where his explanation in respect of certain investment had been rejected. When the matter came up before the Madhya Pradesh High Court, the Court observed as under,

"...The Tribunal has considered the materials on record and came to the conclusion that no case was made out for imposing the penalty on the assessee. The Tribunal pointed out that the materials placed on record by the assessee, i.e., the certificate of

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> the Secretary of the Maharani, who was the mother's sister of the assessee, showing that gifts and donations were made by the Maharani of Indore to the assessee from time to time, was not considered while imposing penalty on the assessee. The Tribunal also observed that the assessee voluntarily offered the income for assessment. The Tribunal further considered that the AAC, throughout the body of the order, treated the assessee as a defaulter and did not invoke the Explanation to S.271 (1)(c) of the Act. The Tribunal also held that even if the Explanation was invoked, there was nothing to indicate that the asessee committed fraud or gross or wilful neglect in returning the income. On these findings, the Tribunal set aside the order imposing penalty on the assessee. The penalty has been set aside on the basis of findings of fact recorded by the Tribunal on the materials produced on record and no questions of law, as proposed by the Department, arise out of the order of the Tribunal."

From the above it is clear that the Court was not inclined to interfere with the findings of fact recorded by the Tribunal on the basis of materials produced before it and found that there was no questions of law.

8. In the case on hand also, as narrated above, the conclusion of the Tribunal was purely on the basis of findings of facts and we do not see any reason whatsoever to interfere with the same. No question of law much less substantial question of law arises for consideration in these appeals.

9. Consequently, the question raised in the present appeals are answered in the affirmative against the revenue and in favour of the assessee. The appeals are dismissed."

5. In view of the above conclusion, we do not find any error or infirmity in the order of the Appellate Tribunal and hence, the same warrants no interference. Accordingly,

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the tax case appeals are dismissed as no substantial question of law arises for consideration of this Court. No costs. Consequently, connected T.C.M.Ps are dismissed.
msk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Assistant Registrar
Income-tax Appelalte Tribunal
Rajaji Bhavan III Floor
Besant Nagar, Chennai 90

2. The Commissioner of Income tax VI Chennai

3. The Commissioner of Income Tax (Appeals) XI Chennai

4. The Deputy Commissioner of Income Tax Circle I 91)
Pondicherry - 1

+ Three cc to Mr. N. Muralikumaran, Advocate sr no. 10695 to 10697)

JRG(CO)
NM(16.03.2006)

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